IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 5741 of 2004

With

CRIMINAL MISC.APPLICATION No. 5742 of 2004
CRIMINAL MISC.APPLICATION No. 5743 of 2004
CRIMINAL MISC.APPLICATION No. 5744 of 2004
CRIMINAL MISC.APPLICATION No. 5745 of 2004
CRIMINAL MISC.APPLICATION No. 5746 of 2004
CRIMINAL MISC.APPLICATION No. 5747 of 2004
CRIMINAL MISC.APPLICATION No. 5748 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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YOGESH BABUBHAI TRIVEDI & 3 - Applicant(s)
Versus
K.V. DABHI FOOD INSPECTOR & 4 - Respondent(s)

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Appearance :
MR KM PATEL for Petitioners.
RULE SERVED for Respondent(s) : 1,
None for Respondent(s) : 2 - 4.
MR MUKESH PATEL, APP for Respondent No. 5.

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 20/10/2005

COMMON ORAL JUDGMENT

1.Since common issue is involved in all these petitions and since the arguments are also commonly canvassed by Mr. K.M. Patel, learned advocate appearing for the petitioners and Mr. Mukesh Patel, learned Assistant Public Prosecutor for the respondent No. 5, all these petitions are disposed of by this common order and judgment.

2.Cri. Misc. Application No. 5741 of 2004 is filed by the petitioners – original accused

Nos. 1 to 4 in Criminal Case No. 5791 of 2002 pending before the Chief Judicial Magistrate, Bhavnagar.

3.Cri. Misc. Application No. 5742 of 2004 is filed by the petitioners – original accused Nos. 1 to 5 in Criminal Case No. 1460 of 2002 pending before the Judicial Magistrate First Class, Talaja.

4.Cri. Misc. Application No. 5743 of 2004 is filed by the petitioners – original accused Nos. 1 to 4 in Criminal Case No. 16 of 2002 pending before the Chief Judicial Magistrate, Nadiad.

5.Cri. Misc. Application No. 5744 of 2004 is filed by the petitioners – original accused Nos. 1 to 4 in Criminal Case No. 907 of 2002 pending before the Judicial Magistrate First Class, Botad.

6.Cri. Misc. Application No. 5745 of 2004 is filed by the petitioners – original accused Nos. 1 to 5 in Criminal Case No. 1190 of 2002 pending before the Judicial Magistrate First Class, Palitana.

7.Cri. Misc. Application No. 5746 of 2004 is filed by the petitioners – original accused Nos. 1 to 5 in Criminal Case No. 1286 of 2002 pending before the Judicial Magistrate First Class, Mahuva.

8.Cri. Misc. Application No. 5747 of 2004 is filed by the petitioners – original accused Nos. 1 to 5 in Criminal Case No. 1189 of 2002 pending before the Judicial Magistrate First Class, Palitana.

9.Cri. Misc. Application No. 5748 of 2004 is filed by the petitioners – original accused

Nos. 1 to 5 in Criminal Case No. 187 of 2002 pending before the Judicial Magistrate First Class, Vallabhipur.

10.All these petitions are filed under Section 482 of the Criminal Procedure Code praying for quashing and setting aside the respective criminal cases and order taking cognizance of the said complaints and the processes issued against the petitioners for the alleged offence punishable under Section 16 (1) (a) for the alleged breach committed by the petitioners of the provisions of Section 2 (1a) (a)(c)(d)(n) and 7 (i) of the Prevention of Food Adulteration Act, 1954.

11.It is the case of the petitioners that Gujarat Civil Supply Corporation Limited, one of the petitioners in all these petitions is a Govt. Company incorporated for undertaking the work of public distribution system and related work.

The Corporation acts also has procurement and distribution agency for various Govt. Schemes such as Mid-day Meal Scheme, Integrated Child Development Programme etc. The petitioner Corporation is accordingly required to procure and supply edible oil, Foodgrains & pulses for the Mid-day Meal Scheme under which free meals are provided to the children prosecuting studies in Govt. Primary Schools and as also for Integrated Child Development Scheme being implemented by the Sate Government as a welfare measure for children and women in rural areas.

12.It is also the case of the petitioners that Gujarat State Co-operative Marketing Federation Limited (GUJCOMASOL) which is an apex society of various cooperative marketing societies in the State of Gujarat and which is engaged in manufacturing, procurement and marketing of agricultural and related produce including edible oil. The petitioner Corporation has

received a letter dated 09.06.1997 from the Commissioner, Mid-day Meal Scheme and Ex-officio Secretary, Education Department, State of Gujarat requisitioning about 76,000 tins of ground-nut oil and about 51,330 tins of cotton-seed oil for Mid-day Meal Scheme and had requested the petitioner Corporation to procure and make available the said quantity of edible oil for the first academic term of the year 1997-98 for Mid-day Meal Scheme and Integrated Child Development Scheme. The petitioner Corporation has also received requisition for 72,000 tins of cotton-seed oil for Integrated Child Development Scheme from the Director, ICDS as per its requisition.

13.It is also the case of the petitioners that pursuant to the said requisition, the petitioner Corporation had by its tender notice dated 10.07.1997 issued in the Newspaper invited tenders for sale and supply of about

76,000 tins of ground-nut oil and about 1,23,000 tins of refined cotton seed oil from the Cooperative Societies engaged in production of edible oil. As per the tender notice, the tenderers were advised to collect the terms and conditions for purchase of edible oil by the Corporation. The terms and conditions of supply of edible oil contained specifications for ground-nut oil to be sold and supplied by the tenderers.

14.It is also the case of the petitioners that pursuant to the tender notice, the Federation submitted tender dated 17.07.1997 for supply of ground-nut oil as also for supply of refined cotton seed oil. Thereafter, the petitioner Corporation had issued and placed order dated 20.09.1997 with the Federation for sale and supply of 40,000 tins of ground-nut oil at the rate of Rs. 630/- per tin (inclusive of all taxes). After the order dated 20.09.1997 was

placed, Federation delivered and supplied in packed and sealed condition 40,000 tins of ground-nut oil with label containing particulars of the article of food as Kalpataru Groundnut Oil, distributed by the Gujarat State Civil Supplies Corporation Limited (Gujarat Govt. undertaking), packed by Gujarat State Coop. Marketing Federation Limited. The said 40,000/- tins of ground-nut oil were delivered and supplied by Federation to the petitioner Corporation from its storage tanks described by the Federation as Gukcomasol c/o. Diamond Oil Industries at Kadi between 07.11.1997 to 05.12.1997. The 40,000 tins of ground nut oil so sold and supplied by the Federation in packed and sealed condition were dispatched to different godowns of the Corporation in the State for being issued for the Mid-Day Meal Scheme, or through fair price shops and by about 13.01.1998 about 24,300 tins of groundnut oil sold and supplied by the Federation were

delivered in packed and sealed condition for use under the Mid-Day Meal Scheme. The petitioner Corporation had made payment of Rs.2,52,00,000/- being the purchase price of 40,000 tins of groundnut oil at the rate of Rs.630/- per tin, after deducting amount of Rs.8,174/- from purchase price towards penalty.

15.It is also the case of the petitioners that after ground-nut oil sold and supplied by the Federation and delivered for Mid-Day Meal Scheme by the petitioner Corporation, complaints were received from users through Commissioner of Mid-Day Meal Scheme that the groundnut oil issued to them was adulterated. The Commissioner, Mid-Day Meal Scheme in his letter dated 06.01.1998 to the Secretary, Finance Department and In-charge Managing Director of petitioner Corporation brought it to the notice that the edible oil supplied in Bhavnagar district was visibly adulterated and

suggested for withdrawal of ground-nut oil from Mid-Day Meal Scheme to ensure prevention of health hazards to children and suggested strict action against guilty. On the complaints being received, inquiry was made and samples of the ground-nut oil supplied by the Federation and lying in stock at godowns of the petitioner Corporation were collected for analysis. The samples were taken by the Corporation as also by the Food Inspectors under the Prevention of Food Adulteration Act, 1954. The analysis of samples taken by the Corporation and the Food Inspectors of groundnut oil taken from the packed and sealed tins sold and supplied by the Corporation reveals that the groundnut oil supplied by it was adulterated and it did not conform to the specification of quality as per tender conditions as also the norms of quality prescribed for groundnut oil under the Prevention of Food Adulteration Act, 1954 and the rules framed thereunder. The groundnut oil

sold and supplied by the Federation was found to have been adulterated with cotton seed oil and other oils such as Soyabean oil, Repseed oil etc. The entire quantity of 40,000 tins of groundnut oil thus sold and supplied by the Federation in packed and sealed condition was adulterated and did not conform to quality specifications as per contract between the parties and the provisions of Prevention of Food Adulteration Act and Rules framed thereunder.

16.It is also the case of the petitioner Corporation that the petitioner Corporation has filed Civil Suit No. 5108 of 1998 in the City Civil Court at Ahmedabad for breach of contract and for damages against the Federation and has prayed for a decree of Rs.4,27,35,959/-. The petitioner Corporation is, therefore, of the view that the Federation had sold and supplied groundnut oil in a sealed and packed teen to

the petitioner Corporation and the same, when distributed from the godowns of the Corporation was found to be adulterated. On the complaint of the petitioner Corporation and the Govt. agency, samples were taken by the Food Inspector from various godowns of the Corporation. The details of concerned godowns, date of drawing samples, date of report of Analyst and the Analysis Reports are as under :-

Concerned Godowns	Date of drawing Sample	Date of Report of P.A.	Analysis Report		
			B.R. of 40 Deg.C. (54 Deg. 57.1 Deg C)	Iodine Value (85.0 to 99.0)	Bellier Test (39.0 to 41 Deg C
Gariadhar	13.01.1998	11/02/98	60.8	124.9	23 Deg.C
Mahuva	09/01/98	11/02/98	60.8	125.85	23 Deg.C
Palitana	13.01.98	11/02/98	60.5	125.00	23 Deg.C
Chitra	03/01/98	16.01.98	59.5	118.2	17.5DegC
Talaja	09/01/98	11/02/98	60.6	124.3	22 Deg.C
Botad	09/01/98	11/02/98	60.8	124.9	23 Deg.C
Vallabhipur	08/01/98	11/02/98	60.7	124	22 Deg.C
Nadiad	28.01.98		61.4	127.3	20 Deg.C

17.On the basis of the aforesaid reports of the Analyst, the respondent No. 1 Food Inspectors have filed 8 criminal cases in different Courts. The date of filing the complaint, criminal case Nos. and the name of the Courts are as under :-

Criminal Case No.	Court	Date of complaint
1190/2002	Judicial Magistrate First Class, Palitana.	09/10/02
1286/2002	Judicial Magistrate First Class, Mahuva.	22/10/02
1189/2002	Judicial Magistrate First Class, Palitana.	09/10/02
5791/2002	Judicial Magistrate First Class, Bhavnagar.	11/10/02
1460/2002	Judicial Magistrate First Class, Talaja.	24/09/02
907/2002	Judicial Magistrate First Class, Botad.	27/09/02
187/2002	Judicial Magistrate First Class, Vallabhipur.	19/10/02
16/2002	Judicial Magistrate First Class, Nadiad.	11/09/02

18.Being aggrieved by the said criminal cases and the processes issued therein, the petitioners, while maintaining that the groundnut oil supplied by the Federation was adulterated, approached this Court for quashing the

complaints and the processes issued by the learned Magistrates against the petitioners.

19.Mr. K.M. Patel, learned advocate appearing for the petitioners in all these petitions has submitted that there is abnormal delay in filing the complaints by the Food Inspector. The samples were taken in the month of January, 1998 and the report of the Public Analyst was prepared in the month of February, 1998 and the complaints were filed in the month of September/October, 2002. There is a gross delay of about 4 years which itself has resulted into miscarriage of justice. Mr. Patel has, therefore, submitted that the complaints are required to be quashed on the ground of unexplained delay of more than 4 years.

20.Mr. Patel has further submitted that the sanction for prosecution was given by the

Assistant Commissioner and Local Health Authority, Bhavnagar in the month of August, 2002. The said sanction is absolutely mechanical and without application of mind whatsoever. The authority while granting sanction for prosecution did not take into account the fact that the petitioner Corporation and its Officers arrayed as accused were in no way responsible for the adulteration. The groundnut oil in the packed tin was sold and supplied to the petitioner Corporation by the Federation. The petitioners are, therefore, in no way responsible for the adulteration of the groundnut oil supplied in packed tins by the Federation. In fact, it is the petitioner Corporation which is the complainant and is victim of supply of adulterated oil by the Federation. The decision of the authority granting sanction for prosecution is, therefore, completely vitiated on account of non-application of mind.

21.Mr. Patel has further submitted that all these complaints are absolutely vague and imprecise in so far as the petitioners are concerned. The complaints are filed mechanically against the petitioners and all its responsible officers and employees without naming them. Except in case of Godown Keeper, no one is personally named as accused. The complaints are completely silent as to how all the responsible Officers and employees of the Corporation have played role in committing offence punishable under Section 16 (1) (a) of the Prevention of Food Adulteration Act, 1955. The complaints and consequent processes issued by the learned Magistrate against the petitioners are, therefore, liable to be quashed and set aside.

22.Mr. Patel has further submitted, without prejudice to the contentions of the petitioners that ground-nut oil supplied by the Federation

in fact was adulterated, that delay of four years has resulted in palpable and gross injustice to the petitioners. The samples taken by the Food Inspector were of edible oil. The delay of more than four years in filing the complaints has rendered valuable rights of the petitioners to have the samples tested by the Central Food Laboratory completely nugatory and illusory. If the proceedings are allowed to go on against the petitioners, it will cause grave prejudice to the petitioners. Mr. Patel has, therefore, submitted that the complaints, order taking cognizance and the processes issued against the petitioners are liable to be quashed and set aside.

23.Mr. Patel has further submitted that the complaints record that the samples were taken from the packed tin of groundnut oil. The report of Public Analyst also records that the samples analysed were from packed tin of

groundnut oil. The packed tin contain label of description of goods and name of the supplier i.e. Gujarat State Co-operative Marketing Federation Limited C/o Diamond Oil Industries. This being factual position, there was really no case for prosecution against the petitioners as the petitioners are in no way responsible for guilty of adulteration. He has, therefore, submitted that the complaints, order taking cognizance and processes issued are liable to be quashed and set aside.

24.Mr. Patel has further submitted that in all these complaints, the Federation and its Directors were joined as accused. They had filed Cri. Misc. Application Nos. 8888/2002, 8886/2002, 8887/2002, 8889/2002, 8890/2002, 8140/2002, 8144/2002 and 8885/2002. This Court by its common judgment and order dated 09.05.2003 has allowed the said applications and quashed the complaints qua them with

liberty to the Trial Court to exercise power under Section 319 of Cr.P.C. When the Federation being manufacturer and all its Officers have been relieved by this Court from the rigor of criminal trial by quashing the complaints for them, there is no reason to proceed against the present petitioners. Mr. Patel has, therefore, submitted that all these petitions deserve to be allowed and the complaints are liable to be quashed and set aside.

25.Mr. Mukesh Patel, learned Assistant Public Prosecutor appearing for the State and Food Inspectors has submitted that the present petitioners are distributors and they are straightway covered by the provisions contained in Section 7 of Prevention of Food Adulteration Act, 1954. Section 7 deals with prohibitions of manufacture, sale etc., of certain articles of food. It says that no person shall himself

or by any person on his behalf manufacture for sale, or store, sell or distribute - (i) any adulterated food; (ii) any misbranded food. Since the edible oil in question are adulterated food and they are stored, sold and distributed by the present petitioners, they are liable to be prosecuted under the Act.

26.Mr. Mukesh Patel has further submitted that the defences raised by the petitioners in these petitions are not available to them looking to the provisions contained in Section 19 of the Act which says that it shall be no defence in a prosecution for an offence pertaining to the sale of any adulterated or misbranded article of food to allege merely that the vendor was ignorant of the nature, substance or quality of the food sold by him or that the purchaser having been purchased any article for analysis was not prejudiced by the sale. Mr. Patel has further submitted that the petitioners are

required to prove during the course of the trial that the article of food while in their possession was properly stamped and that they have sold the same in the same state as they purchased.

27.Mr. Mukesh Patel has relied on the decision of the Hon'ble Supreme Court in the case of **State of Punjab V/s. Devinder Kumar and Others, A.I.R. 1983 S.C. 545** wherein it is held that the Act is brought into force to check social evils in larger public interest for ensuring public welfare. While construing food laws, Courts should keep in view that the need for prevention of future injury is as important as punishing a wrong doer after the injury is actually inflicted. Merely because a person who has actually suffered in his health after consuming adulterated food would not be before Court. In such cases, Courts should not be too eager to quash on slender grounds the

prosecutions for offences, alleged to have been committed under the Act. The Court has further held that the High Court committed a serious error in these cases in quashing the criminal proceedings in different Magistrates' Courts at a premature stage in exercise of its extraordinary jurisdiction under Section 482 of the Criminal Procedure Code. These are not cases where it can be said that there is no legal evidence at all in support of the prosecution. The prosecution has still to lead its evidence. It is neither expedient nor possible to arrive at a conclusion at this stage on the guilt or innocence of the accused on the material before the Court. While there is no doubt that the onus of proving the case is on the prosecution, it is equally clear that the prosecution should have sufficient opportunity to adduce all available evidence.

28.Mr. Mukesh Patel has further submitted that

there is no substance in the contention raised before this Court by the petitioners that the sanction was granted after four years. As per the provisions contained in Section 468(2)(c), complaint can be filed within a period of 3 years. As per the provisions contained in Section 470(3), if for filing the complaint for criminal offence any sanction of the Govt. or the Competent Authority is required, in that case, the said complaint can be filed within one year from the date of receipt of such sanction. In the present case, the Public Analyst has submitted his report on 18.02.1998 and the sanction was received by the complainant on 27.09.2002. He has, therefore, submitted that the period from 19.05.1998 to 27.08.2002 cannot be considered for the purpose of computing the period of limitation.

29.Mr. Mukesh Patel has further submitted that with regard to the petitioners' contention that

the complaints are not filed against any named persons, the same has no force in view of the fact that despite the requisite details being called for, no such details have been furnished by the present petitioners and hence, the complaints were filed in the name of the Corporation and all other responsible persons. The order passed by this Court earlier quashing all these complaints qua some of the accused would not render any assistance to the present petitioners as the issues raised by the present petitioners are not raised earlier before the Court and even otherwise, the present petitioners are squarely covered by the provisions contained in Section 7 of the Act and hence, the complaints qua the present petitioners cannot be quashed simply on the ground that the said complaints are quashed with regard to other co-accused.

30.In view of the above submissions, Mr. Patel

has strongly submitted before the Court that there is no merit in any of the contentions raised by the petitioners and hence, this Court should not quash the complaints at this premature stage while exercising its inherent jurisdiction under Section 482 of the Criminal Procedure Code.

31. After having heard the learned advocate appearing for the petitioners and the learned Assistant Public Prosecutor appearing for the State and the Food Inspectors, after having gone through the contents of the complaint and the petitions and the documents attached therewith and after having carefully examined the relevant statutory provisions and the authorities cited and relied on, the Court is of the view that all these complaints qua the petitioners, are required to be quashed and set aside as no offences are prima facie revealed in the complaints.

32.Certain undisputed facts which are emerging from the complaints are that the Federation has supplied edible groundnut oil in packed sealed tins. Samples were taken from the packed tin of groundnut oil. The report given by the Public Analyst also recorded that the samples analysed were taken from packed tin of groundnut oil. The packed tin contained label of description of goods and name of supplier. This being factual position and despite these facts, if the Federation being manufacturer and its Officers are absolved by this Court as a result of criminal complaints having been quashed qua them, there is really no case for prosecution against the present petitioners.

33.The complaints filed after the period of about four years is such an important issue from the view point of the petitioners, which cannot be overlooked or taken lightly by the Court.

Though the Public Analysts have given their reports in January / February, 1998 and the same were forwarded to the State Government for its sanction for prosecution, the same was not given for four years. This shows that the State Government is not very serious about filing of all these complaints. When the sanction is mechanically granted without any application of mind and only by way of observing mere formalities and that too, after gross, inordinate and unexplained delay of about four years, complaints based on such sanction are difficult to sustain.

34. Over and above this, reasons given and observations made by this Court while quashing the complaints qua the manufacturer and its Directors vide its order dated 09.05.2005 in Cri. Misc. Application Nos. 8885 of 2002 and other cognate matters are equally applicable to the facts of present petitions and are

sufficient to quash the complaints qua the present petitioners. There was no allegation in the complaints which would bring the case within the scope of Section 17 (4) of the Act. There was also no allegation in the complaints that the offence was committed with the consent / connivance / negligence of the petitioners. In absence of such allegations, the complaints filed against them could not be sustained and are, therefore, liable to be quashed at this stage. It is, however, made clear that the corporation being an accused person, the trial Court could proceed against any person under Section 319 of the Criminal Procedure Code.

35.The judgment relied on by Mr. Mukesh Patel, learned Assistant Public Prosecutor, in the case of State of Punjab V/s. Devinder Kumar and Others (Supra) is distinguishable on facts as in the present case, there is no allegation about commission of offence, much less, any

legal documentary evidence. Moreover, complaints qua the manufacturer and its Directors are quashed by this Court and that decision has been accepted by the prosecution. Thus, there seems to be logically sound reason why the complaints qua the present petitioners who are distributors of packed and sealed tins of groundnut oil, cannot be quashed. Since the onus of proving the case is on the prosecution and the prosecution has failed to make out even a prima facie case against the petitioners, there is no question of having sufficient opportunity to adduce all available evidence during the course of trial.

36.It is however, made clear that the quashing of complaints qua the petitioners would not come in the way of the petitioners or prejudice their case against the manufacturers claiming damages in Civil Suit despite the fact that complaints qua them are also quashed by this

Court.

37.Subject to the aforesaid observations and findings, the petitions are allowed at this stage and the Criminal Case No. 1189 & 1190 of 2002 pending in the Court of Judicial Magistrate First Class, Palitana, Criminal Case No. 1286 of 2002 pending in the Court of Judicial Magistrate First Class, Mahuva, Criminal Case No. 5791 of 2002 pending in the Court of Chief Judicial Magistrate, Bhavnagar, Criminal Case No. 1460 of 2002 pending in the Court of Judicial Magistrate First Class, Talaja, Criminal Case No. 907 of 2002 pending in the Court of Judicial Magistrate First Class, Botad, Criminal Case No. 187 of 2002 pending in the Court of Judicial Magistrate First Class, Vallabhipur and Criminal Case No. 16/2002 pending in the Court of Chief Judicial Magistrate, Nadiad are quashed qua the petitioners only with liberty to the Trial

Court to exercise its powers under Section 319 of the Criminal Procedure Code. Rule is made absolute accordingly with no order as to costs.

[K.A. PUJ, J.]

Savariya